

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

MICHAEL A. JOY, :  
Plaintiff, :  
v. : Civ. Action No. 07-405-JJF  
: :  
HEALTHCARE C.M.S., WARDEN :  
RAPHAEL WILLIAMS, COMMISSIONER:  
CARL C. DANBERG, GOVERNOR RUTH:  
ANN MINNER, and MAYOR JAMES M.:  
BAKER, :  
: :  
Defendants. :

## ORDER

NOW THEREFORE, at Wilmington this 21 day of February, 2008,

IT IS HEREBY ORDERED that:

1. The Clerk of the Court shall cause a copy of this Order to be mailed to Plaintiff.
  2. Plaintiff's claims against Defendants Governor Ruth Ann Minner, Department of Correction Commissioner Carl C. Danberg, and Wilmington Mayor James M. Baker are DISMISSED as frivolous and for failure to state a claim upon which relief may be granted pursuant to 28 U.S.C. § 1915(e)(2)(B) and § 1915A(b)(1). They are DISMISSED as Defendants in the case.
  3. The Court has identified cognizable Eighth Amendment claims against Defendants Warden Raphael Williams and Correctional Medical Services. Plaintiff is allowed to PROCEED against these Defendants.

IT IS FURTHER ORDERED that:

1. Pursuant to Fed. R. Civ. P. 4(c)(2) and (d)(2), Plaintiff shall provide the Court with **original "U.S. Marshal-285"** forms for **remaining Defendants Warden Raphael Williams and Correctional Medical Services**, as well as for the Attorney General of the State of Delaware, 820 N. FRENCH STREET, WILMINGTON, DELAWARE, 19801, pursuant to Del. Code Ann. tit. 10, § 3103(c). Plaintiff shall provide the Court with copies of the Complaint and amendments (D.I. 5, 6, 13) for service upon the remaining Defendants and the Attorney General. Plaintiff is notified that the United States Marshal will not serve the Complaint and its amendments until all "U.S. Marshal 285" forms have been received by the Clerk of the Court. Failure to provide the "U.S. Marshal 285" forms and copies of the Complaints and its amendments for each remaining Defendant and the Attorney General within 120 days from the date of this Order may result in the Complaint being dismissed or Defendants being dismissed pursuant to Federal Rule of Civil Procedure 4(m).

2. Upon receipt of the form(s) required by paragraph 1 above, the United States Marshal shall forthwith serve a copy of the Complaint and amendments (D.I. 5, 6, 13), this Order, a "Notice of Lawsuit" form, the filing fee order(s), and a "Return of Waiver" form upon the Defendant(s) so identified in each 285 form.

3. Within **thirty (30) days** from the date that the "Notice of Lawsuit" and "Return of Waiver" forms are sent, if an executed "Waiver of Service of Summons" form has not been received from a Defendant, the United States Marshal shall personally serve said Defendants pursuant to Fed. R. Civ. P. 4(c)(2) and said Defendants shall be required to bear the cost related to such service, unless good cause is shown for failure to sign and return the waiver.

4. Pursuant to Fed. R. Civ. P. 4(d)(3), a Defendant who, before being served with process timely returns a waiver as requested, is required to answer or otherwise respond to the complaint within **sixty (60) days** from the date upon which the complaint, this order, the "Notice of Lawsuit" form, and the "Return of Waiver" form are sent. If a Defendant responds by way of a motion, said motion shall be accompanied by a brief or a memorandum of points and authorities and any supporting affidavits.

5. No communication, including pleadings, briefs, statement of position, etc., will be considered by the Court in this civil action unless the documents reflect proof of service upon the parties or their counsel.

6. **NOTE: \*\*\*** When an amended complaint is filed prior to service, the Court will **VACATE** all previous service orders entered, and service **will not take place**. An amended complaint

filed prior to service shall be subject to re-screening pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A(a). \*\*\*

7. **NOTE:** \*\*\* Discovery motions and motions for appointment of counsel filed prior to service will be dismissed without prejudice, with leave to refile following service. \*\*\*

  
UNITED STATES DISTRICT JUDGE